

John F. Harnes (admitted *pro hac vice*)
Gregory E. Keller (admitted *pro hac vice*)
CHITWOOD HARLEY HARNES LLP
1350 Broadway, Suite 908
New York, New York 10018
Tel.: (404) 873-3900
Fax: (404) 876-4476
JHarnes@chitwoodlaw.com
GKeller@chitwoodlaw.com

1230 Peachtree Street, NE
Suite 2300
Atlanta, Georgia 30309
Tel: (404) 873-3900
Fax: (404) 876-4476

Counsel for Plaintiff Mississippi Public
Employees' Retirement System

Richard M. Heimann
(State Bar No. 63607)
Joy A. Kruse
(State Bar No. 142799)
LIEFF CABRASER HEIMANN &
BERNSTEIN LLP
275 Battery Street, 29th Floor
San Francisco, California 94111- 3339
Tel: (415) 956-1000
Fax: (415) 956-1008
rheimann@lchb.com
jakruse@lchb.com

Counsel for Plaintiff Mississippi Public
Employees' Retirement System

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE DIAMOND FOODS, INC.,
SECURITIES LITIGATION

Case No.: 11-cv-05386-WHA
MODIFIED
~~PROPOSED~~ ORDER FOR DISTRIBUTION
OF CLASS SETTLEMENT FUND

This Document Relates to:

All Actions

Date: November 20, 2014
Time: 8:00 a.m.
Courtroom: 8, 19th Floor
Judge: The Honorable William H. Alsup

1 **AND NOW**, this 16th day of October, 2014, upon consideration of
2 Lead Plaintiff's Unopposed Motion for Permission to Distribute Net Settlement Fund and
3 the Memorandum and Points of Authorities in Support thereof in the above-captioned
4 action (the "Distribution Motion") and the Declaration of Justin R. Hughes, Vice
5 President of Class Actions for Kurtzman Carson Consultants, LLC ("KCC" or the
6 "Claims Administrator") dated October 2, 2014 (the "Hughes Declaration"), and upon the
7 Amended Stipulation of Settlement dated as of August 20, 2013 [Doc. No. 284] (the
8 "Settlement Stipulation"), and upon the Order Granting Final Approval of Proposed Class
9 Settlement and Granting in Part Attorney's Fees and Reimbursement of Expenses dated
10 January 10, 2014 [Doc. No. 305] (the "Final Approval Order") and the Judgment dated
11 January 21, 2014 [Doc. No. 316] (the "Judgment") approving the Settlement Stipulation,
12 and upon all prior proceedings heretofore had herein and after due deliberation, it is
13 hereby **ORDERED** as follows:

14 1. The administrative determinations of the Claims Administrator accepting
15 the claims as indicated on the computer printouts submitted with and described in
16 the Hughes Declaration and Exhibits E and F thereto, including claims submitted
17 after February 28, 2014 up through September 16, 2014, are approved and said
18 claims are hereby accepted.

19 2. The administrative determinations of the Claims Administrator rejecting
20 the claims as indicated on the computer printout submitted with and described in
21 the Hughes Declaration and Exhibit D thereto are approved, and said claims are
22 hereby rejected.

23 3. The Claims Administrator is authorized to process the electronic claim
24 submitted on September 26, 2014, to determine the validity of such claim and any
25 Recognized Loss associated with the claim, and, if approved by the Claims
26 Administrator, to include such claim in the total Recognized Losses and make an
27 appropriate pro-rata distribution to the claimant. As a result of the late filing of the
28

1 claim, which would render the claim otherwise invalid, the claimant is not entitled
2 to review of the Claims Administrator's determination with respect to validity and
3 Recognized Loss.

4 4. The Claims Administrator is directed to distribute the balance of the
5 Settlement Fund in accordance with the Settlement Stipulation after deducting the
6 payments previously allowed and set forth herein (the "Net Settlement Fund") to
7 the Authorized Claimants listed on Exhibits E and F to the Hughes Declaration by
8 calculating each Authorized Claimant's pro-rata allocation of the Net Cash
9 Settlement Fund and Settlement Shares in the Net Settlement Fund determined by
10 that Claimant's Recognized Loss as compared to the total Recognized Losses of
11 all Authorized Claimants.

12 5. The Court authorizes distribution to Class Counsel of the stock component
13 of the previously-awarded attorney's fees, reduced, if appropriate, to reflect the
14 pro-rata sale of Settlement Shares to pay tax liabilities, with such distribution to
15 occur at the same time the Settlement Shares are distributed to the Class. To the
16 extent that more Settlement Shares are sold by the Escrow Agent prior to
17 distribution than is necessary to satisfy estimated tax liabilities of the Settlement
18 Fund, Class Counsel is entitled to receive its pro-rata share of the proceeds of the
19 sale of Settlement Shares in excess of the amount necessary to fund tax liabilities.
20 In the event that the Settlement Shares are sold or substituted for cash before
21 distribution pursuant to a transaction under Paragraph 4.3 or 4.4 of the Settlement
22 Stipulation, Class Counsel is entitled to receive the proceeds of the sale or
23 substitution of the stock component of the attorneys' fee award at the time of the
24 initial distribution of the Net Settlement Fund to Authorized Claimants.

25 6. The Court authorizes payment from the Net Settlement Fund of up to an
26 additional \$50,000 for Notice and Administration Costs that are in excess of the
27 \$300,000 amount in the Class Notice and Administration Fund that was previously
28

1 approved by the Court.

2 7. The Court directs that the cash distributions to the Authorized Claimants
3 shall bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-
4 DISTRIBUTION IF NOT CASHED BY 60 DAYS AFTER ORIGINAL CHECK
5 ISSUE DATE." The Court authorizes the Claims Administrator to take
6 appropriate action to locate and/or contact any eligible claimant who has not
7 cashed his, her or its distribution within said time.

8 8. The Court authorizes any Settlement Shares remaining in the Net
9 Settlement Fund after the initial distribution to be sold, with the proceeds to be
10 deposited into the Net Cash Settlement Fund, together with any balance remaining
11 therein (whether by reason of tax refunds, un-cashed checks, or otherwise).

12 9. The Court also orders, pursuant to the Plan of Allocation previously
13 approved by the Court, that after reasonable and diligent efforts have been made to
14 have Class Members who are entitled to participate in the distribution of the Net
15 Settlement Fund cash their initial distribution check, and if Class Counsel
16 determine a re-distribution to be feasible and practicable, Class Counsel may direct
17 any balance remaining in the Net Settlement Fund four (4) months from the date of
18 the initial distribution of such funds to be distributed to Class Members who have
19 cashed their initial distribution checks (if they received one) and who would
20 receive at least \$10.00 from such re-distribution and to any Authorized Claimant
21 whose deficiency was cured or whose Recognized Loss was modified pursuant to
22 supplemental information submitted to the Claims Administrator subsequent to
23 the September 16, 2014 cut-off date, after payment of any unpaid costs or fees
24 incurred in administering the Net Settlement Fund for such re-distribution. If any
25 funds remain in the Net Settlement Fund after such re-distribution, or if Class
26 Counsel determine that a re-distribution is not feasible and/or practicable, then the
27 remaining balance shall be contributed to the Boston College Innocence Project at
28

1 Boston College School of Law, a non-sectarian, not-for-profit, § 501(c)(3)
 2 organization.

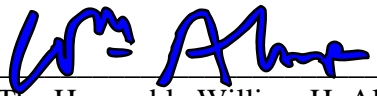
3 10. The Court also finds that the administration of the Settlement and the
 4 proposed distribution of the Net Settlement Fund comply with the terms of the
 5 Settlement Stipulation and the Plan of Allocation approved by this Court and that
 6 all persons involved in the review, verification, calculation, tabulation, or any
 7 other aspect of the processing of the claims submitted herein, or otherwise
 8 involved in the administration or taxation of the Settlement Fund or the Net
 9 Settlement Fund are released and discharged from all claims arising out of such
 10 involvement, and all Class Members, whether or not they are to receive payment
 11 from the Net Settlement Fund, are barred from making any further claim against
 12 the Net Settlement Fund or the released persons beyond the amount allocated to
 13 them pursuant to this Order.

14 11. The Court authorizes the Claims Administrator to discard paper or hard
 15 copies of the Proof of Claim forms and supporting documents one year after
 16 distribution of the Net Settlement Fund to the Authorized Claimants and electronic
 17 or magnetic media data three years after distribution of the Net Settlement Fund to
 18 the Authorized Claimants.

19 12. The Court shall retain jurisdiction over any further application or matter
 20 that may arise in connection with this action, including, without limitation,
 21 certification by Class Counsel that the Settlement Fund has been completely
 22 distributed following a re-distribution of unclaimed funds, if one occurs, and a *cy*
 23 *pres* donation of the remainder, as provided in Paragraph 9 of this Order.

24 ~~13. The Court orders that no claim submitted after September 30, 2014 may be~~
 25 ~~accepted or considered for any reason whatsoever.~~

26
 27 DATED: October 16, 2014.

28 
 The Honorable William H. Alsup
 United States District Judge